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6 Attorneys for Defendant and Cross-Complainant  
 SHARON GREEN

**FILED**  
 JUL 24 2007  
 RICHARD P. WASSERMAN  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

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 UNITED STATES DISTRICT COURT  
 9  
 NORTHERN DISTRICT OF CALIFORNIA

COPY

8784

11 FRITZI BENESCH,  
 12 Plaintiff,  
 13 v.  
 14 SHARON GREEN; and DOES 1 through 10,  
 inclusive,  
 15 Defendants.

16  
 17  
 18 SHARON GREEN,  
 19 Cross-Complainant,  
 20 v.  
 21 FRITZI BENESCH, and ROES 1 through 25,  
 inclusive  
 22 Cross-Defendants.

**NOTICE OF REMOVAL OF  
 ACTION UNDER 28 U.S.C. § 1441(b)  
 (DIVERSITY) AND DEMAND FOR  
 JURY TRIAL**

24 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN  
 25 DISTRICT OF CALIFORNIA:**

26 PLEASE TAKE NOTICE THAT Defendant and Cross-Complainant SHARON GREEN  
 27 ("Green") hereby removes to this Court the action described below:

**SEDGWICK**  
DETERT, MORAN & ARNOLD LLP

1                   **STATEMENT OF FACTS ENTITLING DEFENDANT TO REMOVAL**

2         1. On April 24, 2007, an action was commenced by Plaintiff and Cross-Defendant  
 3         Fritzi Benesch ("Benesch") in the Superior Court of the State of California in and for the County  
 4         of San Francisco, entitled Fritzi Benesch v. Sharon Green; and Does One through Ten, inclusive,  
 5         Superior Court Case No. 07-462683. A true and correct copy of the unverified Complaint  
 6         ("Complaint") is attached hereto as **Exhibit A**.

7         2. The first date upon which Green was served with a copy of the Complaint was June  
 8         25, 2007, when Green was personally served with service of process at her business in Las Vegas,  
 9         Nevada. Green received by process server the Summons, Civil Case Cover Sheet and Complaint.  
 10         True and correct copies of the Summons and Civil Cover Sheet are attached hereto as **Exhibit B**.

11         3. Green filed an answer to the Complaint on July 24, 2007. A true and correct copy  
 12         of the answer is attached hereto as **Exhibit C**.

13         4. Green filed a cross-complaint against Benesch on July 24, 2007 for nonpayment of  
 14         legal fees owing to Green on the grounds of contract and quantum meruit. A true and correct copy  
 15         of the cross-complaint is attached hereto as **Exhibit D**.

16         5. Plaintiff and Cross-Defendant FRITZI BENESCH was, at the time of the filing of  
 17         this action, and still is, a citizen of the State of California, residing at her home in San Francisco,  
 18         California.

19         6. Defendant and Cross-Complainant SHARON GREEN was, at the time of the filing  
 20         of this action, and still is, a citizen of the State of Nevada with her principle place of business at  
 21         1721 Waldman Avenue, Las Vegas, Nevada 89102.

22         7. Defendant and Cross-Complainant SHARON GREEN was, at the time of the filing  
 23         of this action, and still is, the only named defendant.

24                   **JURISDICTION**

25         8. As the appended record demonstrates, this action may be removed to this Court  
 26         pursuant to 28 U.S.C. § 1441(b) because this Court has original jurisdiction over this action  
 27         pursuant to 28 U.S.C. § 1332(a) as there is complete diversity of citizenship between the litigants,

1 and it is facially apparent from the Complaint that the amount in controversy exceeds \$75,000,  
 2 exclusive of interest and costs.

3       9.     The matter in controversy exceeds the sum of \$75,000, exclusive of interest and  
 4 costs in that Benesch alleges that this is an unlimited civil case arising out of alleged damages,  
 5 legal fees and costs incurred by Benesch in the separate matter of Fritzi Benesch v. Valli Benesch  
 6 Tandler et. al., San Francisco Superior Court Case No. 317187 (“Benesch Action”). (Exhibit A,  
 7 Complaint, paragraph 6.)

8       10.    Green represented Benesch in the Benesch Action, a breach of fiduciary  
 9 duty/fraud/negligence action wherein Benesch alleged that her daughter and son-in-law Valli and  
 10 Robert Tandler improperly effected the transfer of seventy to eighty million dollars worth of  
 11 Benesch’s community property. A true and correct copy of Plaintiff’s Amended Complaint filed  
 12 in Fritzi Benesch v. Valli Benesch Tandler et. al., San Francisco Superior Court Case No. 317187  
 13 is attached as **Exhibit E**.

14      11.    Benesch contends that on or about April 17 and 18, 2006, she participated in a  
 15 mediation in San Francisco in an effort to arrive at a settlement of the Benesch Action. (Exhibit A,  
 16 Complaint, paragraph 5.)

17      12.    Benesch contends that at the conclusion of the mediation, she executed a settlement  
 18 term sheet, in reliance on Green’s advice, with certain of the defendants in the Benesch Action.  
 19 Benesch further alleges that the settlement required for its consummation the subsequent consent  
 20 and participation of a third party, but that party’s consent and participation were not provided.  
 21 Benesch claims that the settlement, at that point, should have been null and void, but Green failed  
 22 to ensure that the settlement term sheet accurately reflected the parties’ mutual intent, and the  
 23 settling defendants moved to enforce the settlement notwithstanding the lack of consent on the part  
 24 of the third party. Benesch contends that she has incurred and continues to incur substantial legal  
 25 expenses in opposing the enforcement efforts, which would not have been incurred if Green had  
 26 seen to it that the settlement term sheet accurately reflected the parties’ agreement. (Exhibit A,  
 27 Complaint, paragraph 6.)

28      13.    Since April 24, 2006, when Green substituted out of the Benesch Action as attorney

1 of record for Benesch, Benesch has retained at least three law firms, namely McGrane Greenfield  
 2 LLP, Liner Yankelevitz Sunshine Regenstrief LLP and Coblenz, Patch, Duffy & Bass LLP, to  
 3 represent her interests in opposing the Tandlers' enforcement efforts. A true and correct copy of  
 4 the Substitution of Attorney of McGrane Greenfield LLP and Association of Counsel of Liner  
 5 Yankelevitz Sunshine Regenstrief LLP are collectively attached as **Exhibit F**.

6       14.     Benesch's efforts to oppose the Tandlers' enforcement efforts began on April 20,  
 7 2006 and continue to the present. Benesch seeks to recover from Green all legal expenses incurred  
 8 in connection with opposing the Tandlers' enforcement efforts in the Benesch Action. (Exhibit A,  
 9 Complaint, paragraph 6.)

10       15.     After a reasonable inquiry regarding Benesch's purported damages in the above-  
 11 captioned action and upon information and belief, the alleged legal expenses from defending  
 12 against the Tanders' enforcement action for more than a year will total far more than \$75,000.  
 13 Federal Rule of Civil Procedure 11. (Exhibit A, Complaint, paragraphs 6 and 10).

14       16.     This removal is timely, having been made within thirty days of the service of the  
 15 Summons and Complaint on Defendant. 28 U.S.C. § 1446(b). Removal is also timely because  
 16 this Notice of Removal is filed no more than one year after the action was commenced in the state  
 17 court.

#### INTRADISTRICT ASSIGNMENT

19       17.     Assignment to this Court is proper as the action is pending in San Francisco County  
 20 Superior Court.

21       18.     The presence of Doe Defendants in this case has no bearing on diversity with  
 22 respect to removal. For purposes of removal under this chapter, the citizenship of defendants sued  
 23 under fictitious names shall be disregarded. 28 U.S.C. § 1441(a).

24       19.     Green reserves the right to amend or supplement this Notice of Removal.

25       20.     District court will not recharacterize a plaintiff as a defendant for removal purposes,  
 26 therefore, Benesch is not a "defendant" for purposes of assessing joinder to removal, despite being  
 27 sued by Green as a Cross-Defendant. (See Shamrock Oil & Gas Corp. v. Sheets (1941) 313 U.S.  
 28 100, 107, 61 S.Ct. 868, 85 L. Ed 1214.)

21. Green is the only defendant in this action, therefore, the only defendant hereby consents to this removal. (See Lewis v. Rego Company, 757 F.2d 66; 68 (3rd Cir. 1985).)

22. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being filed with the Clerk of the Superior Court of the State of California, in and for the County of San Francisco.

23. Pursuant to 28 U.S.C. § 1446(d), Defendant has served Plaintiff with a Notice to State Court and Adverse Party of Removal to Federal Court and Jury Demand.

WHEREFORE, Defendant and Cross-Complainant SHARON GREEN hereby removes the action now pending against her in the Superior Court of California, County of San Francisco.

**DEMAND FOR JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure 38(b) Defendant and Cross-Complainant  
SHARON GREEN hereby demands trial by jury of all issues appropriate for jury determination.

DATED: July 24, 2007

SEDGWICK, DETERT, MORAN & ARNOLD LLP

By:   
Steven D. Wasserman  
Mark J. Hancock  
Attorneys for Defendant and Cross-Complainant  
SHARON GREEN



COBLENTZ, PATCH, DUFFY & BASS LLP  
 ONE FERRY BUILDING, SUITE 200, SAN FRANCISCO, CALIFORNIA 94111-4213  
 415.391.4800 . FAX 415.989.1663

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 A. MARISA CHUN (State Bar No. 160351)  
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 3 San Francisco, California 94111-4213  
 Telephone: 415.391.4800  
 4 Facsimile: 415.989.1663  
 Email: ef-jrb@cpdb.com,  
 5 ef-amc@cpdb.com

6 Attorneys for Plaintiff FRITZI BENESCH

**ENDORSED**  
**FILED**  
*San Francisco County Superior Court*

APR 24 2007  
**GORDON PARK-LI, Clerk**  
 BY: PARAM NATT  
 Deputy Clerk

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8  
9 COUNTY OF SAN FRANCISCO

10 FRITZI BENESCH,

11 Plaintiff,

12 v.

13 SHARON GREEN, and DOES 1 through 10,  
inclusive,

14 Defendants.

Case No. CGC -07-462683

**COMPLAINT FOR  
PROFESSIONAL MALPRACTICE**

**CASE MANAGEMENT CONFERENCE SET**

**SEP 21 2007 -9<sup>AM</sup>**

**DEPARTMENT 212**

16 Plaintiff FRITZI BENESCH alleges:

**PARTIES**

17 1. Plaintiff Fritz Benesch is a resident of San Francisco, California.

18 2. Defendant Sharon Green is a resident of Clark County, Nevada. Green is an  
19 attorney at law, licensed to practice in the State of California. At all times relevant to this action,  
20 she held herself out to possess that degree of skill, ability and learning common to attorneys  
21 specializing in litigation.

22 3. Plaintiff is unaware of the true names of the defendants sued as DOES 1 though 10.  
23 Plaintiff will amend this complaint when the true names of said defendants have been ascertained.

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**FIRST CAUSE OF ACTION**  
**(Professional Malpractice)**

4. In or about August 2000, Green filed an action, on plaintiff's behalf, entitled *Fritzi Benesch v. Valli Benesch Tandler*, San Francisco County Superior Court Case No. 317187 (the "Action").

5. On or about April 17 and 18, 2006, plaintiff participated in a mediation in San Francisco, in an effort to arrive at a settlement of the Action.

6. At the conclusion of the mediation, plaintiff executed a settlement term sheet, in reliance on Green's advice, with certain of the defendants in the Action. The settlement required for its consummation the subsequent consent and participation of a third party, but that party's consent and participation were not provided. The settlement should at that point have been null and void. But Green failed to ensure that the settlement term sheet accurately reflected the parties' mutual intent, and the settling defendants moved to enforce the settlement notwithstanding the lack of consent on the part of the third party. Plaintiff has incurred, and she continues to incur, substantial legal expenses in opposing the enforcement efforts. These expenses would not have been incurred if Green had seen to it that the settlement term sheet accurately reflected the parties' agreement.

7. As plaintiff's attorney at the mediation, Green owed plaintiff a professional duty of care with respect to the representation. That duty included, among other things, the duty to provide adequate advice to plaintiff regarding the terms of any proposed settlement and to ensure that any settlement was properly documented.

8. Green breached the professional duty of care owed by her to plaintiff.

9. As a proximate result of Green's breach of duty, plaintiff executed a settlement term sheet that failed to adequately document the parties' actual agreement with respect to the requirement of the third party's consent.

10. As a proximate result of said breach, plaintiff has suffered damages according to proof at trial.

## **PRAAYER**

**WHEREFORE**, Plaintiff prays for relief as follows:

1. For damages according to proof;
  2. For costs of suit;
  3. For pre-judgment interest; and
  4. For such other and further relief as the Court deems proper.

DATED: April 24, 2007

COBLENTZ, PATCH, DUFFY & BASS LLP

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JONATHAN R. BASS  
Attorneys for Plaintiff  
FRITZI BENESCH

**COBLENTZ, PATCH, DUFFY & BASS LLP**  
ONE FERRY BUILDING, SUITE 200, SAN FRANCISCO, CALIFORNIA 94111-4213  
415.391.4800 • FAX 415.989.1663

**EXHIBIT B**

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**  
**SHARON GREEN, and DOERS 1 through 10, inclusive**

**YOU ARE BEING SUED BY PLAINTIFF:**  
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**  
**FRITZI BENESCH**

SUM-100  
FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORT)

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form. If you want the court to hear your case, there must be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/helpcenter](http://www.courtinfo.ca.gov/helpcenter)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/helpcenter](http://www.courtinfo.ca.gov/helpcenter)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto al igual que procesan su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/helpcenter/espanol](http://www.courtinfo.ca.gov/helpcenter/espanol)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de costas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más aviso previo.

Hay otras regulaciones legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de revisión o abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/helpcenter/espanol](http://www.courtinfo.ca.gov/helpcenter/espanol)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:  
 (El nombre y dirección de la corte es):

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO**

400 McAllister Street, Room 103, San Francisco, CA 94102

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Jonathan R. Bass (Bar # 075779)

Coblentz, Patch, Duffy & Bass LLP

One Ferry Building, Suite 200, San Francisco, CA 94111

DATE: APR 24 2007 (Fecha) Gordon Park-11

Clerk, by \_\_\_\_\_  
 (Secretary)

CASE NUMBER:  
 (Número de expediente): **LGU-07-462683**

Phone No. (415) 391-4800  
 Fax No. (415) 989-1663

P. NATT  
 Deputy  
 (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (Form POS-010).)  
 (Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED: You are served**

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):

3.  on behalf of (specify):

under:  CCP 418.10 (corporation)  CCP 418.60 (minor)  
 CCP 418.20 (defunct corporation)  CCP 418.70 (conservatee)  
 CCP 418.40 (association or partnership)  CCP 418.80 (authorized person)  
 other (specify):

4.  by personal delivery on (date):

Page 1 of 1

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, address): <b>Jonathan R. Bass (State Bar # 075779)</b> <b>Coblentz, Patch, Duffy &amp; Bass LLP</b> <b>One Ferry Building, Suite 200, San Francisco, CA 94111</b> <b>TELEPHONE NO. (415) 391-4800</b> <b>FAX NO. (415) 989-1663</b> <b>ATTORNEY FOR (Name): FRITZI BENESCH, Plaintiff</b>		FOR COURT USE ONLY  <b>ENDORSED</b> <b>FILED</b> <i>San Francisco County Superior Court</i> <b>APR 24 2007</b> <b>GORDON PARK-LI, Clerk</b> <b>BY: PARAM NATT</b> <i>Deputy Clerk</i>	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street, Room 103 MAILING ADDRESS: Same CITY AND ZIP CODE: San Francisco 94102 BRANCH NAME: Civil Division			
CASE NAME: <b>Fritzi Benesch v. Sharon Green</b>			
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> Unlimited <input type="checkbox"/> Limited (Amount demanded exceeds \$25,000)      (Amount demanded is \$25,000 or less)		<b>Complex Case Designation</b> <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	<b>CASE NUMBER:</b> <b>CGC-07-462683</b>
			<b>JUDGE:</b> <b>DEPT:</b>

Items 1-5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b>	<b>Contract</b>	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403)
<input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)	<input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)	<input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30)
<b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b>	<b>Real Property</b>	<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
<input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23)	<input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)	<b>Enforcement of Judgment</b>
<b>Non-PI/PD/WD (Other) Tort</b>	<b>Unlawful Detainer</b>	<input type="checkbox"/> Enforcement of judgment (20)
<input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input checked="" type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35)	<input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)	<b>Miscellaneous Civil Complaint</b>
<b>Employment</b>	<b>Judicial Review</b>	<input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)
<input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Miscellaneous Civil Petition</b>
		<input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a.  Large number of separately represented parties
- b.  Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
- c.  Substantial amount of documentary evidence
- d.  Large number of witnesses
- e.  Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- f.  Substantial postjudgment judicial supervision

3. Type of remedies sought (check all that apply):

- a.  monetary
- b.  nonmonetary; declaratory or injunctive relief
- c.  punitive

4. Number of causes of action (specify): /

5. This case  is  is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: April 24, 2007

**JONATHAN R. BASS**

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

1 JONATHAN R. BASS (State Bar No. 75779)  
2 A. MARISA CHUN (State Bar No. 160351)  
COBLENTZ, PATCH, DUFFY & BASS LLP  
One Ferry Building, Suite 200  
3 San Francisco, California 94111-4213  
Telephone: 415.391.4800  
4 Facsimile: 415.989.1663  
Email: ef-jrb@cpdb.com,  
ef-amc@cpdb.com

5  
6 Attorneys for FRITZI BENESCH

7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN FRANCISCO

10

11 FRITZI BENESCH,

12 Plaintiff,

13 v.

14 SHARON GREEN, and DOES 1 through 10,  
inclusive,

15 Defendants.

16

Case No. CGC-07-462683

17 PROOF OF SERVICE OF SUMMONS BY  
PERSONAL SERVICE

18 Action Filed: April 24, 2007

19 Trial Date: None Set

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27

28

A. MARISA CHUN (SBN 160351)  
 COBLENTZ, PATCH, DUFFY & BASS, LLP  
 One Ferry Building, Suite 200  
 San Francisco, CA 94111  
 Telephone: (415) 391-4800  
 Attorney for: Plaintiff

FOR COURT USE ONLY

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

Plaintiff : FRITZI BENESCH,

Defendant : SHARON GREEN, et al.

Ref#: 216642 PROOF OF SERVICE OF SUMMONS Case No.: CGC-07-462683

1. At the time of service I was at least eighteen years of age and not a party to this action.
2. I served copies of:  
 SUMMONS; COMPLAINT FOR PROFESSIONAL MALPRACTICE; CIVIL CASE COVER SHEET;  
 NOTICE TO PLAINTIFF; ADR INFORMATION PACKAGE; MEDIATION SERVICES PAMPHLET

3. a. Party served : SHARON GREEN, ESQ.

4. Address where the party was served:

(Business)  
 1721 Waldman Ave.  
 Las Vegas, NV 89102

5. I served the party

- a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on: June 25, 2007 (2) at: 9:16 AM

### PROOF OF SERVICE OF SUMMONS

6. The "Notice to the Person Served" (on the summons) was completed as follows:  
a. as an individual defendant
7. Person who served papers:  
a. KEVIN R. SMITH  
b. SPECIALIZED LEGAL SERVICES, INC.  
1112 Bryant Street, Suite 200  
San Francisco, CA 94103  
c. Telephone number: (415) 357-0500  
d. The fee for service was: \$242.50  
e. I am:  
(i) a registered California process server:  
(ii) owner, employee or independent contractor  
(iii) Registration no.:  
(iv) County:
8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: June 25, 2007

KEVIN R. SMITH

Kevin R. Smith

POS-010 Rev. January 1, 2007

216642

### PROOF OF SERVICE OF SUMMONS

P.03/03

4154875772 TO 17023848638

JUN 25 2007 09:59 FR 00

JUN 25 2007 12:51

PAGE.03

\*\* TOTAL PAGE.03 \*\*

*Benesch v. Green, et al.*  
San Francisco Superior Court, Case No. CGC-07-462683

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO**

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Francisco, State of California. My business address is One Ferry Building, Suite 200, San Francisco, California 94111.

On June 25, 2007, I served true copies of the following document(s) described as

**PROOF OF SERVICE OF SUMMONS BY PERSONAL SERVICE**

on the interested parties in this action as follows:

Sharon Green, Esq.  
 1721 Waldman Avenue  
 Las Vegas, NV 89102

Steven D. Wasserman, Esq.  
 Sedgwick, Detert, Moran & Arnold, LLP  
 One Market Plaza  
 Steuart Tower, 8th Floor  
 San Francisco, CA 94105

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Coblenz, Patch, Duffy & Bass LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 25, 2007, at San Francisco, California.

  
 \_\_\_\_\_  
 Paulann Dymond

**EXHIBIT C**

1 SEDGWICK, DETERT, MORAN & ARNOLD LLP  
 2 STEVEN D. WASSERMAN (Bar No. 88291)  
 3 MARK J. HANCOCK (Bar No. 160662)  
 4 SUNNY S. SHAPIRO (Bar No. 221111)  
 5 One Market Plaza  
 Steuart Tower, 8th Floor  
 San Francisco, California 94105  
 Telephone: (415) 781-7900  
 Facsimile: (415) 781-2635

*RECEIVED  
FILED  
San Francisco County Superior Court*

6 Attorneys for Defendant  
 7 SHARON GREEN

*JULY 9 2007*

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN FRANCISCO

10  
 11 FRITZI BENESCH,  
 12 Plaintiff,  
 13 v.  
 14 SHARON GREEN,  
 15 Defendant.

CASE NO. 462683

**ANSWER OF DEFENDANT SHARON  
GREEN TO PLAINTIFF'S COMPLAINT**

Complaint Filed: April 24, 2007  
 Trial Date: Not Set

16  
 17 Defendant SHARON GREEN (referred to herein as "Defendant") hereby answers the  
 18 Complaint (referred to herein as the "Complaint") of plaintiff FRITZI BENESCH (referred to  
 19 herein as "Plaintiff") as follows:

20 Pursuant to the provisions of Code of Civil Procedure §431.30(d), Defendant denies each  
 21 and every and all of the allegations of said Complaint, and deny that Plaintiff sustained damages  
 22 in the sum or sums alleged or in any other sum or at all.

23  
 24 **AFFIRMATIVE DEFENSES**

25 **FIRST AFFIRMATIVE DEFENSE**

26 Plaintiff's Complaint, and each and every cause of action thereof, fails to state facts  
 27 sufficient to constitute a cause of action against Defendant.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's Complaint, and each and every cause of action thereof alleged against Defendant, is barred by the applicable statute of limitations, including but not limited to, Code of Civil Procedure sections 337, 338, 339, 340.6, and 343.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's Complaint, and each and every cause of action thereof alleged against Defendant, is barred by the equitable doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff has failed to take proper and reasonable steps to avoid or mitigate her damages, if any there were, and to the extent of such failure to mitigate, or avoid damages, any recovery by Plaintiff should be reduced accordingly.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff was negligent and otherwise at fault in and about the matters alleged in the Complaint and such negligence and fault bars and/or diminishes Plaintiff's recovery against Defendant herein.

SIXTH AFFIRMATIVE DEFENSE

Any and all losses and damages sustained by Plaintiff, if any there were, were proximately caused by Plaintiff's knowing and intentional acts.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's injuries and damages, if any, were proximately caused by the negligence, willful acts or liability of other parties, and Defendant requests that an allocation of such negligence and liability be made among such other parties, and if any liability is found on the part of Defendant, a judgment be only in the amount that is proportionate to the extent and percentage by which Defendant's acts or omissions contributed to Plaintiff's damages, if at all in any amount.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's injuries and damages, if any there were, were proximately caused by the negligence, willful acts or liability of persons who are not parties to this action.

SEDGWICK  
DETERT, MORAN & ARNOLD, LLP

## NINTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint, and each and every cause of action thereof, is barred by the doctrine of unclean hands.

## TENTH AFFIRMATIVE DEFENSE

Plaintiff is estopped from asserting her claims herein by reason of her conduct with respect to the matters giving rise to this action.

## ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff has waived the right to present her claims herein by reason of her conduct with respect to the matters giving rise to this action.

## TWELFTH AFFIRMATIVE DEFENSE

Defendant fully and completely fulfilled her duties to Plaintiff, if any, and exercised proper care and skill in doing so.

## THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff has not been damaged as a result of any reliance on any representation made by Defendant.

## **FOURTEENTH AFFIRMATIVE DEFENSE**

If Plaintiff relied on anything it alleges to have been a representation by Defendant, such reliance was neither reasonable nor justifiable.

## FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff assumed the risk of the matters giving rise to this action.

## SIXTEENTH AFFIRMATIVE DEFENSE

The contributory negligence and/or comparative fault of Plaintiff is a superseding and/or intervening cause of her alleged losses, detriments, injuries, or damages.

## SEVENTEENTH AFFIRMATIVE DEFENSE

One or more independent third party's negligence or other fault is a superseding and/or intervening cause of any alleged losses, detriments, injuries, or damages claimed by Plaintiff.

11

111

EIGHTEENTH AFFIRMATIVE DEFENSE

Defendant alleges that she performed each of her obligations to Plaintiff, if any there were, except those obligations which she was prevented and/or excused from performing by the acts and/or omissions of Plaintiff and/or other individuals not named in the Complaint.

NINETEENTH AFFIRMATIVE DEFENSE

Defendant alleges that to the extent Plaintiff alleges that Defendant had any obligation as to which full performance has not been rendered or excused, there has been a failure of consideration.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiff has failed to state her claim with sufficient particularity to permit Defendant to raise all appropriate defenses, and thus Defendant reserves the right to add additional defenses as the factual basis for Plaintiff's claims become known.

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff takes nothing from Defendant by way of her Complaint herein;
2. That the Complaint herein be dismissed with prejudice as against Defendant and judgment entered in favor of Defendant;
3. That Defendant be awarded her costs of suit incurred herein; and
4. For such other and further relief as the Court deems just and proper.

DATED: July 19, 2007

SEDGWICK, DETERT, MORAN & ARNOLD LLP

By: \_\_\_\_\_

Steven D. Wasserman  
Mark J. Hancock  
Sunny S. Shapiro  
Attorneys for Defendant  
SHARON GREEN

*In Re Benesch v. Sharon Green*

0003-001174

Superior Court of the State of California, County of San Francisco Case No. 462683

1

**PROOF OF SERVICE**

2

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Sedgwick, Detert, Moran & Arnold LLP, One Market Plaza, Steuart Tower, 8th Floor, San Francisco, California 94105. On July 24, 2007, I served the within document(s):

5

**ANSWER OF DEFENDANT SHARON GREEN TO PLAINTIFF'S COMPLAINT**

6

- FACSIMILE - by transmitting via facsimile the document(s) listed above to the fax number(s) set forth on the attached Telecommunications Cover Page(s) on this date before 5:00 p.m.
- MAIL - by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.
- PERSONAL SERVICE - by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- OVERNIGHT COURIER - by placing the document(s) listed above in a sealed envelope with shipping prepaid, and depositing in a collection box for next day delivery to the person(s) at the address(es) set forth below via .

13

Jonathan R. Bass

Attorneys for Fritz Benesch

14

A. Marisa Chun

Tel: (415) 391-4800

15

Coblentz, Patch, Duffy &amp; Bass LLP

Fax: (415) 989-1663

1 Ferry Bldg #200

San Francisco, CA 94111-4213

16

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

19

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 24, 2007, at San Francisco, California.

20


  
\_\_\_\_\_  
Marlene Adelman

21

22

23

24

25

26

27

28



1 SEDGWICK, DETERT, MORAN & ARNOLD LLP  
 2 STEVEN D. WASSERMAN (Bar No. 88291)  
 3 MARK J. HANCOCK (Bar No. 160662)  
 4 SUNNY S. SHAPIRO (Bar No. 221111)  
 5 One Market Plaza  
 Steuart Tower, 8th Floor  
 San Francisco, California 94105  
 Telephone: (415) 781-7900  
 Facsimile: (415) 781-2635

*RECEIVED  
FILED  
San Francisco County Superior Court*

JUL 9 4 2007

*SUPERIOR COURT OF CALIFORNIA  
V. WESLEY R. WIDEN*

6 Attorneys for Defendant  
 SHARON GREEN  
 7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 9 COUNTY OF SAN FRANCISCO

10 11 FRITZI BENESCH,

CASE NO. 462683

12 Plaintiff,

**CROSS-COMPLAINT OF SHARON  
GREEN FOR ACCOUNT STATED AND  
QUANTUM MERUIT**

13 v.  
 14 15 SHARON GREEN, and DOES 1 through  
 10, inclusive,

Complaint Filed: April 24, 2007  
 Trial Date: Not Set

Defendants.

16 17 SHARON GREEN,

18 Cross-Complainant,

19 v.

20 21 FRITZI BENESCH, and ROES 1 through  
 25, inclusive

22 Cross-Defendants.

23 NOW COMES Cross-Complainant SHARON GREEN (referred to herein as "Green")  
 24 and for a cause of action against plaintiff and cross-defendant FRITZI BENESCH (referred to  
 25 herein as "Benesch") alleges as follows:

26 **GENERAL ALLEGATIONS**

27 1. Green is a resident of Las Vegas, Nevada. Green is an attorney licensed to practice  
 28 law in California and Nevada.

SEDGWICK  
 ETERT, MORAN & ARNOLD LLP

2. Fritzi Benesch is a resident of San Francisco, California.

3. That the true names or capacities whether individual, corporate, associate or otherwise, of cross-defendants ROES 1 through 25, inclusive, are unknown to Green, who therefore sues said cross-defendants by such fictitious names. Green is informed and believes and thereon allege that each of the fictitiously named cross-defendants is legally responsible in some manner for the injuries and damages alleged herein and, therefore, Green requests that when the true names and capacities of said fictitiously named cross-defendants are ascertained, it be permitted to insert the same herein.

4. Green is informed and believes and on such information and belief alleges that at all times herein mentioned each of the cross-defendants was the agent, servant, or employee of each of the other cross-defendants and was at all times acting within the scope of such agency and employment.

5. On or about August 2000, Green entered into a written fee agreement with Benesch wherein Green agreed to provide legal services to Benesch, and Benesch agreed to pay Green for the services provided, in connection with the case entitled Fritzi Benesch v. Valli Benesch Tandler, et. al., San Francisco Superior Court Case No. CGC-00-317187 (referred to herein as the "Tandler Matter").

6. On or about April 24, 2006, Benesch terminated Green and retained new counsel, William N. McGrane in the Tandler Matter. On or about April 25, 2006 a substitution of attorney was entered in the Tandler Matter substituting in Mr. McGrane as counsel of record for Fritzi Benesch. Green issued invoices to Benesch for services rendered and costs incurred.

**FIRST CAUSE OF ACTION**  
**(Account Stated)**

7. Green re-alleges and incorporates Paragraphs 1 through 6 above as though fully set forth herein.

8. Within the last six years, in the County of San Francisco, California, an account was stated in writing by and between Green and Benesch by which a balance in excess of \$50,000.00 was found due from Benesch to Green. An amount in excess of \$50,000.00 is due

and unpaid, despite demand by Green, plus prejudgment interest according to proof.

**SECOND CAUSE OF ACTION**  
**(Quantum Meruit)**

9. Green re-alleges and incorporates Paragraphs 1 through 8 above as though fully set forth herein.

10. Within the last six years, within the County of San Francisco, California, Green provided legal services to Benesch in connection with the Tandler Matter, at the special express request of Benesch. The legal services provided by Green were at all times prudent, justified, fair and reasonable. Benesch knew at all times that the legal services requested were being provided by Green. Benesch accepted, used, and enjoyed the services provided by Green, and promised to pay the reasonable value of said services. The services rendered by Green were intended to and did benefit Benesch.

11. At all times herein mentioned the above services and costs were and are of the reasonable value in excess of \$50,000.00. Neither the whole nor any part of which has been paid although demand has been made. Green is therefore entitled to judgment against Benesch in an amount in excess of \$50,000.00 plus prejudgment interest according to proof.

WHEREFORE, Green prays for judgment against cross-defendants as follows:

1. For damages in the excess of \$50,000.00;
  2. For interest as allowed by law;
  3. For costs of suit; and
  4. For such other and further relief as the Court may deem proper.

DATED: July 19, 2007

**SEDGWICK, DETERT, MORAN & ARNOLD LLP**

By:/

---

Steven D. Wasserman  
Mark J. Hancock  
Sunny S. Shapiro  
Attorneys for Defendant and Cross-Complainant  
SHARON GREEN

*In Re Benesch v. Sharon Green*

0003-001174

Superior Court of the State of California, County of San Francisco Case No. 462683

**PROOF OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Sedgwick, Detert, Moran & Arnold LLP, One Market Plaza, Steuart Tower, 8th Floor, San Francisco, California 94105. On July 24, 2007, I served the within document(s):

**CROSS-COMPLAINT OF SHARON GREEN FOR ACCOUNT STATED AND QUANTUM MERUIT**

- FAXSIMILE - by transmitting via facsimile the document(s) listed above to the fax number(s) set forth on the attached Telecommunications Cover Page(s) on this date before 5:00 p.m.
- MAIL - by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.
- PERSONAL SERVICE - by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- OVERNIGHT COURIER - by placing the document(s) listed above in a sealed envelope with shipping prepaid, and depositing in a collection box for next day delivery to the person(s) at the address(es) set forth below via .

13 Jonathan R. Bass

Attorneys for Fritz Benesch

14 A. Marisa Chun

15 Coblenz, Patch, Duffy &amp; Bass LLP

Tel: (415) 391-4800

1 Ferry Bldg #200

Fax: (415) 989-1663

San Francisco, CA 94111-4213

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 24, 2007, at San Francisco, California.


  
\_\_\_\_\_  
Marlene Adelman



1 SHARON GREEN, LAWYER  
 2 California State Bar No. 43392  
 3 1721 Waldman Avenue  
 4 Las Vegas, NV 89102  
 5 Tel: (702) 387-8124

6 DAVID R. BENJAMIN  
 7 California State Bar No. 65178  
 8 BENJAMIN, WEILL & MAZER  
 A Professional Corporation  
 235 Montgomery Street  
 24th Floor  
 San Francisco, CA 94104  
 Tel: (415) 421-0730

9 Attorneys for Plaintiff

10 SUPERIOR COURT

11 COUNTY OF SAN FRANCISCO

12 FRITZI BENESCH,

13 Plaintiff,

14 vs.

15 VALLI BENESCH TANDLER,  
 16 Individually and as Trustee, ROBERT  
 17 TANDLER, Individually and as Trustee  
 ERNEST BENESCH, WILLIAM  
 18 HOISINGTON, ORRICK, HERRINGTON  
 & SUTCLIFFE, LLP, a California Law  
 Firm, DOES 1 through 20, inclusive,

19 Defendants.

20 CIVIL CASE NO. 317187  
 Room 306, Hon. Kevin M. McCarthy

21 AMENDED COMPLAINT FOR  
 22 DAMAGES

- 23 1. Breach of Fiduciary  
 Duty;
- 24 2. Constructive Fraud;
- 25 3. Professional Negligence;
- 26 4. Financial Elder Abuse, Welfare &  
 Inst. C. §15657;
- 27 5. C.C. §3345 Penalties;
- 28 6. Negligence.

Complaint filed: August 8, 2000  
 Trial Date: May 14, 2002

23 Plaintiff, Fritz BENESCH, alleges:

24 INTRODUCTION

25 1. This action arises from the wrongful conduct of the defendants in effecting the transfer  
 26 of seventy to eighty million dollars worth of Plaintiff's community property to Valli Benesch  
 27 Tandler, her husband, Robert Samuel Tandler, their children and trust entities controlled by them,  
 hereafter referred to collectively as "TANDLERS."

PARTIES

2. The plaintiff in this action is FRITZI BENESCH, ("FRITZI") the wife of Ernest  
3 Benesch, the mother of two daughters, Valli Benesch Tandler, and Connie Benesch; FRITZI was  
4 a client of the Orrick, Herrington & Sutcliffe, Law Firm and Attorney William Hoisington.  
5 FRITZI and Ernest Benesch are presently separated.

6. Plaintiff FRITZI is a resident of California, with her home in San Francisco, California.  
7 FRITZI was one of the two founders of Fritzi California, a San Francisco clothing manufacturer  
8 which FRITZI and her husband started in 1946. Plaintiff is informed and believes that Fritzi  
9 Realty was originally formed as a California corporation by FRITZI and her husband to hold title  
10 to commercial real estate properties they acquired with their earnings. The real estate was  
11 acquired between 1950 and 1970 by FRITZI and her husband, long before their daughter, VALLI  
12 BENESCH, joined their well established clothing company. FRITZI does not know how Fritzi  
13 Realty was affected by corporate reorganizations which may have occurred prior to December  
14 1998. In December 1998, the assets of Fritzi California, including the name, were sold to a third  
15 party and the Fritzi California corporation changed its name to Fritzi Realty.

16. Ernest Benesch ("ERNEST") is the husband of FRITZI. They were married in 1946.  
17 ERNEST was President of Fritzi California from its inception until Valli succeeded him, and then  
18 he became Chairman until his retirement. He is a resident of San Francisco, California

19. Valli Benesch Tandler ("VALLI") is an attorney, and a member of the State Bar of  
20 California (inactive). She is the older daughter of FRITZI and ERNEST. She was hired by Fritzi  
21 California in 1978, and five years later became President of the company. She resides in San  
22 Francisco, California

23. Robert Tandler ("ROBERT") is an attorney, and a member of the State Bar of  
24 California (inactive). He married VALLI in 1983. He was hired by Fritzi California shortly  
25 thereafter. Along with other functions, he served as the General Counsel of Fritzi California. He  
26 resides in San Francisco, California.

27. Defendant William Hoisington ("HOISINGTON") is a resident of Contra Costa County,  
28 and has been an attorney at law, licensed to practice by the California State Bar since 1961. At

1 times relevant to the action he maintained his law office in San Francisco, California, and held  
 2 himself out to possess that degree of skill, ability and learning common to lawyers specializing in  
 3 estate planning. He represented FRITZI from January 1977, to August 14, 1999. HOISINGTON  
 4 has maintained his law office in Lafayette, California from approximately March 31, 1999, to the  
 5 present.

6 8. Plaintiff is informed and believes, and on such grounds alleges that defendant ORRICK,  
 7 HERRINGTON & SUTCLIFFE, LLP, ("ORRICK") at all relevant times was a law partnership  
 8 organized and existing under the laws of the State of California, with its principal place of business  
 9 at San Francisco, California. HOISINGTON and other lawyers with the firm who performed legal  
 10 services for FRITZI were agents, employees, associates, partners or principals of ORRICK, and  
 11 the acts alleged in this complaint occurred within the course and scope of such agency and  
 12 employment. Defendant law firm, authorized, ratified or affirmed each act or omission of  
 13 HOISINGTON and each individual DOE defendant acting as an agent.

14 9. Plaintiff is unaware of the true names and capacities of the defendants sued as DOES  
 15 1 through 20. Plaintiff will amend her complaint when the true names and capacities have been  
 16 ascertained. Plaintiff is informed and believes, and on such grounds alleges that each DOE  
 17 defendant is responsible in some actionable manner for the events, occurrences, injuries and  
 18 damages alleged herein.

19 10. Plaintiff is informed and believes, and on such grounds alleges that at all relevant  
 20 times each of the individual defendants was the authorized agent of each of their individual  
 21 co-defendants, and each was acting within the course, scope and authority of said agency.

22 11. Plaintiff is informed and believes, and on such grounds alleges that the individual  
 23 defendants, VALLI, ROBERT, and ERNEST, agreed and conspired among themselves, and with  
 24 others (DOE defendants) to commit the acts which injured the plaintiff, and each co-conspirator  
 25 committed the acts alleged herein in furtherance of their conspiracy.

#### FACT ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

26 12. In 1977, FRITZI and ERNEST retained ORRICK and HOISINGTON to represent  
 27 them as attorneys, for advice including advice on an estate plan, asset preservation, the investment  
 28

1 and management of income producing properties, related tax planning, and preparation of trusts  
 2 and wills. An attorney client relationship existed between FRITZI and ORRICK and  
 3 HOISINGTON from 1977 to August 14, 1999, when HOISINGTON informed FRITZI that he  
 4 could no longer represent her due to a conflict of interest, resulting from FRITZI'S decision to  
 5 separate from ERNEST.

6 13. In 1977, HOISINGTON prepared a new Will for FRITZI and a related revocable trust  
 7 agreement for FRITZI and ERNEST. These documents were executed on March 16, 1977. One  
 8 of FRITZI'S principal objectives, expressed in these instruments, was the goal of providing  
 9 equally for her two daughters, VALLI and Connie Benesch. As their mother, FRITZI stated and  
 10 believed, as VALLI knew, that each daughter should share equally in the wealth the parents had  
 11 accumulated during the parents' lifetime; this opinion of FRITZI did not change.

12 14. December 22, 1976, VALLI was admitted to the State Bar of California. After  
 13 practicing law for two years with the law firm of Brobeck, Phleger & Harrison, VALLI was hired  
 14 as Vice President of Fritz California. She served as ERNEST'S assistant for five years, and then  
 15 she was elected to the position of President and Chief Executive Officer of Fritz California.

16 15. In 1981, VALLI retained HOISINGTON and the ORRICK firm to advise her on  
 17 estate, corporate, and tax matters. HOISINGTON and ORRICK accepted the retention in spite  
 18 of the inherent conflict of interest in representing her at the same time these defendants  
 19 represented VALLI'S parents. They did not seek a waiver of the conflict from FRITZI - in fact  
 20 neither of them ever informed FRITZI that they were also representing VALLI, nor did they ever  
 21 inform FRITZI that they were representing ROBERT. There was an actual conflict from the time  
 22 VALLI began reviewing FRITZI'S Will and Trust Agreements, which were forwarded to VALLI  
 23 by HOISINGTON without FRITZI'S knowledge or consent. The actual conflict arose from the  
 24 fact that VALLI used the information thus obtained to manipulate the transactions to get more than  
 25 her fair share of the family wealth. The conflicted representation continued until August 14, 1999.  
 26 From 1981 to August 14, 1999, plaintiff is informed and believes, HOISINGTON consulted  
 27 VALLI regarding each and every change to FRITZI'S Will and each and every change to  
 28 FRITZI'S Trust Agreements, and improperly disclosed FRITZI'S confidences to VALLI without

1 consent. Drafts of such documents were forwarded by HOISINGTON to VALLI for VALLI'S  
 2 approval before being presented to FRITZI, all without FRITZI'S knowledge or consent. The  
 3 first time FRITZI had truly independent counsel was after her separation from ERNEST, when  
 4 she retained a family law attorney. When FRITZI reviewed the documents obtained by her family  
 5 law attorney she discovered the extent of the transfers to TANDLERS for the first time. She could  
 6 not have made this discovery earlier, as she did not have independent counsel representing her in  
 7 the family wealth transactions.

8       16. Between 1981 and August 14, 1999, HOISINGTON and VALLI, through various  
 9 amendments to FRITZI'S trust agreements, and other gifts through instruments created by  
 10 HOISINGTON, transferred 70% of the stock in Fritzi California, now known as Fritzi Realty, to  
 11 the TANDLERS. It was never explained to FRITZI by VALLI, ROBERT, HOISINGTON or  
 12 any member of the ORRICK firm what the true extent of the interests transferred to the  
 13 TANDLERS was. Nor was FRITZI informed that transfers of shares in the Fritzi California  
 14 clothing company transferred like percentage interests in the commercial real estate to the  
 15 TANDLERS. The defendants fraudulently concealed this information from FRITZI. Due to their  
 16 fraudulent concealment and her lack of independent legal counsel, FRITZI did not, and could not  
 17 have discovered the defendants' wrongdoing earlier than she did, which was in September, 1999,  
 18 when her family law attorney received a portion of FRITZI'S files from ORRICK.

19       17. In September 1999, FRITZI first discovered that stock transfers to the TANDLERS  
 20 had caused 70% of the stock in Fritzi California/Fritzi Realty to be owned by TANDLERS. At  
 21 the same time she first discovered that only 11% of the stock was held by the Trust for Connie  
 22 Benesch, and only 17% of the stock remained in the possession of FRITZI and ERNEST through  
 23 their own trust. Numerous transactions resulted in the transfer of 70% of the stock and plaintiff  
 24 cannot presently identify all of them. The identities of all such transactions are known to the  
 25 defendants.

26       18. In the last quarter of 1999, FRITZI learned for the first time, with the help of her  
 27 family law attorney that her assets were inadequate for her support in large part due to the  
 28 transfers of her assets to TANDLERS, and she was advised by her family law attorney to reduce

1 her standard of living. When FRITZI explained these circumstances to VALLI, VALLI promptly  
 2 and clearly informed FRITZI that VALLI would not contribute to FRITZI'S support. VALLI  
 3 also refused to honor the company's agreement to pay salaries to her father and mother.

4 19. Contemporaneously with FRITZI'S discovery that the extent of the assets which had  
 5 been transferred to TANDLERS far exceeded anything FRITZI had ever knowingly authorized,  
 6 and that her daughter Connie had been left with only 11% of the assets, FRITZI also learned that  
 7 after she had resigned from the Board of Directors of Fritz California in December 1998, which  
 8 she did believing that her resignation was required as part of the sale of assets of the clothing  
 9 company to Kellwood in December 1998, there was an election of directors for the board of the  
 10 surviving company - Fritz Realty - in January 1999 and only VALLI, ROBERT and ERNEST  
 11 were elected to the Board of Directors of Fritz Realty, leaving FRITZI off the board. She was  
 12 denied access to financial information about the company as a result. Had she been informed of  
 13 the true facts FRITZI would never have consented to: (a) create a situation where she could not  
 14 leave Connie 50% of the family wealth; nor (b) give up more than 50% of the company during  
 15 her lifetime.

16 20. HOISINGTON and ORRICK breached their duty of loyalty to FRITZI when they  
 17 agreed to concurrently represent VALLI and ROBERT. Such representation was a conflict of  
 18 interest with their representation of FRITZI. The conflict caused HOISINGTON to recommend  
 19 transactions to ERNEST which were detrimental to FRITZI and for the exclusive benefit of  
 20 TANDLERS. Plaintiff is informed and believes that HOISINGTON was induced to, and  
 21 participated in creating transactions which were detrimental to FRITZI because of the conflict of  
 22 interest. HOISINGTON and ORRICK breached the standard of care because they failed to exercise  
 23 that degree of diligence, knowledge, care and skill common to members of the legal profession  
 24 and in particular to members of the legal profession who represent clients for the purpose of estate  
 25 planning. They breached the duty of confidentiality by revealing FRITZI'S confidences to VALLI  
 26 without FRITZI'S consent.

27 21. ERNEST breached his fiduciary duties to FRITZI, including those set forth in Family  
 28 Code §1100, *et seq.*, when he engaged in self dealing with their trust, and transferred trust and

1 community property assets to TANDLERS while failing to inform FRITZI of the true nature,  
 2 extent and amount of the assets transferred.

3 22. VALLI breached her fiduciary duties to FRITZI by engaging in self dealing with Fritz  
 4 California stock, by engaging HOISINGTON and ORRICK as her personal attorneys, using  
 5 FRITZI'S confidential information gained from HOISINGTON to disadvantage FRITZ and by  
 6 failing to disclose the true nature and extent of the asset transfers to TANDLERS.

7 23. ROBERT breached his fiduciary duties, and abused his authority as General Counsel  
 8 to Fritz California by engaging in self dealing with Fritz California stock, by his failure to fully  
 9 disclose to FRITZI the true effects of each of the various transactions by which TANDLERS  
 10 gained 70% of the assets once held jointly by FRITZI and ERNEST. ROBERT further breached  
 11 his fiduciary duties to FRITZI by engaging HOISINGTON and ORRICK as his personal attorneys,  
 12 knowing that such engagement was a conflict of interest with their representation of FRITZI, and  
 13 plaintiff is informed and believes that when HOISINGTON raised the conflict of interest issue with  
 14 ROBERT, ROBERT insisted that HOISINGTON and ORRICK continue the conflicted  
 15 representation. ROBERT also failed to disclose the true nature and extent of the asset transfers  
 16 to TANDLERS.

17 **FIRST CAUSE OF ACTION**  
 18 (Breach of Fiduciary Duty Against VALLI)

19 24. Plaintiff incorporates paragraphs 1 through 23 herein.

20 25. By reason of: (A.) the mother and daughter relationship between FRITZI and VALLI;  
 21 (B.) VALLI'S training and experience as a lawyer; and (C.) VALLI'S position as President of  
 22 Fritz California, FRITZI reposed her trust and confidence in VALLI. VALLI was at all times  
 23 aware of her mother's trust, and accepted the fiduciary obligations imposed by such entrustment.

24 26. Plaintiff is informed and believes, and on such grounds alleges that VALLI retained  
 25 defendant HOISINGTON as her own attorney in order to gain access to confidential information  
 26 about FRITZI'S Wills and Trust Agreements, which information VALLI used, not for the benefit  
 27 of advising FRITZI, but for VALLI'S own benefit. VALLI suggested revisions to such  
 28 documents which would benefit VALLI. Such revisions were incorporated in FRITZI'S Will and

1 her trust agreements by HOISINGTON before the documents were presented to FRITZI.

2 27. VALLI further breached her fiduciary duties to FRITZI by first inducing FRITZI not  
3 to attend meetings of the Board of Directors of Fritz California, and ultimately by inducing  
4 FRITZI to resign from the Board in 1998, with no intention of permitting her to be re-elected.

5 28. VALLI further breached her fiduciary duties to FRITZI by failing to disclose to  
6 FRITZI that the transfers of shares of Fritz California stock to TANDLERS also effectively  
7 transferred interests in the real property to TANDLERS. VALLI knew, or should have known,  
8 that FRITZI did not understand the corporate structure VALLI had devised for Fritz California  
9 and Fritz Realty, and did not know that ownership of the real property was being transferred to  
10 VALLI with the Fritz California stock. VALLI knew that FRITZI believed VALLI and her sister  
11 Connie should share equally in the wealth accumulated by their parents. VALLI also knew that  
12 FRITZI was not aware that the transactions VALLI, ERNEST and HOISINGTON had created  
13 were transferring more than 50% of the clothing company to TANDLERS. VALLI had a duty  
14 to disclose this information to FRITZI, and she concealed it.

15 29. VALLI further knew, or should have known, that FRITZI did not understand the  
16 effect of the documents, trust agreements, stock option agreements, and the like which FRITZI  
17 was asked to sign. VALLI knew, or should have known, that in light of her mother's education  
18 and work experience, FRITZI could not have been given adequate explanations by ERNEST.  
19 VALLI also knew that FRITZI did not have independent legal counsel advising her because  
20 HOISINGTON and ORRICK had a conflict of interest.

21 30. VALLI knew, or should have known, that FRITZI did not freely consent to the  
22 transactions set forth in paragraph 17 above. VALLI knew that FRITZI did not truly participate  
23 in the transactions, which were constructed by ERNEST, VALLI and HOISINGTON without  
24 consulting FRITZI. VALLI knew that FRITZI'S sole participation was to execute the documents  
25 which were presented to her.

26 31. VALLI knew that FRITZI was not adequately protected by the transactions, and that  
27 she did not receive adequate consideration in any of the transactions, all of which benefitted  
28 VALLI. VALLI never fully disclosed her personal stake in any of these transactions to FRITZI.

1 VALLI benefitted from these transactions because through them she obtained FRITZI'S assets.

2 VALLI knew that the transactions were not fair and reasonable to FRITZI.

3 32. FRITZI did not consent to the transfer of 70% of the stock and real estate to  
4 TANDLERS and could not have consented because FRITZI did not know until after August 14,  
5 1999, the true extent of such transfers.

6 33. By reason of VALLI'S breach of fiduciary duty FRITZI is entitled to recover special  
7 damages including the costs and legal fees paid to ORRICK, which were expended in preparation  
8 of the transaction documents identified in paragraph 17. The exact amount of the damages thus  
9 incurred has not been fully ascertained, but is subject to proof at trial; the damages are in excess  
10 of the threshold jurisdictional limits of this court.

11 34. As a further legal result of VALLI'S breach of fiduciary duty FRITZI has suffered  
12 general damages, including loss of the assets transferred to TANDLERS; the amount of such  
13 damages has not yet been fully ascertained and is subject to proof at trial; such damages are in  
14 excess of the threshold jurisdictional limits of this court.

15 35. FRITZI is also entitled to recover compensatory damages for the value of lost income  
16 for the use of property, and costs and expenses of this action.

17 36. [Deleted].

18 37. By reason of VALLI'S breach of fiduciary duty, FRITZI is entitled to rescission of the  
19 transfers of assets to TANDLERS, and disgorgement of profits earned by the TANDLERS as a  
20 result of the transactions.

21 38. By reason of VALLI'S breach of fiduciary duty, FRITZI is entitled to an award of  
22 punitive damages for the purpose of punishing VALLI and to deter her and others from such  
23 conduct in the future.

24 SECOND CAUSE OF ACTION  
25 (Breach of Fiduciary Duty Against ROBERT)

26 39. Plaintiff incorporates paragraphs 1 through 23, and 25 through 32 herein.

27 40. By reason of: (A) ROBERT'S position as General Counsel of Fritz California; (B)  
28 his training and experience as a lawyer; and (C) his position as a corporate officer of Fritz

1 California, and (D) his marriage to her daughter, FRITZI reposed her trust and confidence in  
 2 ROBERT. ROBERT was at all times aware of his mother-in-law's trust, and accepted the  
 3 fiduciary obligations imposed by such entrustment.

4 41. Plaintiff is informed and believes, and on such grounds alleges that ROBERT retained  
 5 defendant HOISINGTON as his personal attorney in order to gain access to confidential  
 6 information about FRITZI'S Wills and Trust Agreements, which information ROBERT used, not  
 7 for the benefit of advising FRITZI, but for ROBERT'S own benefit.

8 42. ROBERT further breached his fiduciary duties to FRITZI by first inducing FRITZI  
 9 not to attend meetings of the Board of Directors of Fritz California by failing to give her adequate  
 10 written notice, and then by failing to give her any notice at all, ultimately inducing FRITZI to  
 11 resign from the Board of Fritz California and not re-electing her after the sale of assets of the  
 12 clothing company.

13 43. ROBERT further breached his fiduciary duties to FRITZI by failing to disclose to  
 14 FRITZI that the transfers of shares of Fritz California stock to TANDLERS also effectively  
 15 transferred interests in the real property to TANDLERS. ROBERT knew, or should have known,  
 16 that FRITZI did not understand the corporate structure VALLI had devised for Fritz California  
 17 and Fritz Realty, and did not know that ownership of the real property was being transferred to  
 18 TANDLERS with the Fritz California stock. ROBERT had a duty to disclose this information  
 19 to FRITZI, and he concealed it.

20 44. ROBERT further knew, or should have known, that FRITZI did not understand the  
 21 effect of the documents, trust agreements, stock option agreements, and the like which FRITZI  
 22 was asked to sign. ROBERT knew, or should have known, that in light of FRITZI'S education  
 23 and work experience, FRITZI was given inadequate explanations by ERNEST. FRITZI did not  
 24 have independent legal counsel advising her because HOISINGTON and ORRICK had a conflict  
 25 of interest.

26 45. ROBERT knew, or should have known, that FRITZI did not freely consent to the  
 27 transactions set forth in paragraph 17 above. ROBERT knew that FRITZI did not truly  
 28 participate in the transactions, which were constructed by ERNEST, VALLI and HOISINGTON

1 without consulting FRITZI. ROBERT knew, or should have known that FRITZI'S sole  
 2 participation was to execute the documents which were presented to her.

3 46. ROBERT knew that FRITZI was not adequately protected by the transactions, and that  
 4 she did not receive adequate consideration in any of the transactions, all of which benefitted  
 5 TANDLERS. ROBERT never fully disclosed his personal stake in any of these transactions to  
 6 FRITZI. ROBERT benefitted from these transactions because through them TANDLERS obtained  
 7 FRITZI'S assets. ROBERT knew that the transactions were not fair and reasonable to FRITZI.

8 47. FRITZI did not consent to the transfer of 70% of the stock and real estate to  
 9 TANDLERS and could not have consented because FRITZI did not know until after August 14,  
 10 1999 the true extent of such transfers.

11 48. By reason of ROBERT'S breach of fiduciary duty FRITZI is entitled to recover  
 12 special damages including the costs and legal fees paid to ORRICK, which were expended in  
 13 preparation of the transaction documents identified in paragraph 17. The exact amount of the  
 14 damages thus incurred has not been fully ascertained, but is subject to proof at trial; the damages  
 15 are in excess of the jurisdictional limits of this court.

16 49. As a further legal result of ROBERT'S breach of fiduciary duty FRITZI has suffered  
 17 general damages, including loss of the assets transferred to TANDLERS; the amount of such  
 18 damages has not yet been fully ascertained and is subject to proof at trial; such damages are in  
 19 excess of the jurisdictional limits of this court.

20 50. FRITZI is also entitled to recover compensatory damages for the value of lost income  
 21 for the use of property, and costs and expenses of this action.

22 51. [Deleted].

23 52. By reason of ROBERT'S breach of fiduciary duty, FRITZI is entitled to rescission of  
 24 the transfers of assets to TANDLERS, and disgorgement of profits earned by the TANDLERS as  
 25 a result of the transactions.

26 53. By reason of ROBERT'S breach of fiduciary duty, FRITZI is entitled to an award of  
 27 punitive damages for the purpose of punishing ROBERT and to deter him and others from such  
 28 conduct in the future.

THIRD CAUSE OF ACTION  
(Constructive Fraud Against VALLI and ROBERT)

54. FRITZI incorporates Paragraphs 1 through 23, 25 through 32, and 40 through 47 herein.

55. VALLI and ROBERT gained advantage over FRITZI through their breaches of duty which are alleged in this complaint.

56. The conduct of VALLI and ROBERT alleged herein misled FRITZI to her prejudice, and was the legal cause of millions of dollars worth of FRITZI'S assets being transferred to TANDLERS without FRITZI'S full understanding of what was occurring.

57. Such conduct constitutes constructive fraud on the part of VALLI and ROBERT.

58. To remedy such constructive fraud, FRITZI is entitled to an accounting, rescission of the fraudulent transactions, the imposition of a constructive trust, and reformation of trust agreements, including but not limited to removal of VALLI and ROBERT as trustees, and reformation of title to real property.

59. As a result of the constructive fraud of VALLI and ROBERT, FRITZI has suffered general damages, the total amount of which has not yet been fully ascertained, and is subject to proof at trial. The amount of such damage exceeds the jurisdictional threshold limit of this court.

FOURTH CAUSE OF ACTION  
(Breach of Fiduciary Duty Against ERNEST)

60. Plaintiff incorporates paragraphs 1 through 23, 25 through 32 and 40 through 47 herein.

61. By reason of ERNEST'S marriage to FRITZI, he owed a fiduciary obligation to her as his wife. FRITZI reposed her trust and confidence in ERNEST, and he was at all times aware that she trusted and relied on him

62. Plaintiff is informed and believes, and on such grounds alleges that ERNEST was aware that VALLI and ROBERT had retained defendant HOISINGTON as their personal attorney in order to gain access to confidential information about FRITZI'S Wills and Trust Agreements, which information VALLI and ROBERT used, not for the benefit of advising FRITZI, but for their own benefit.

1       63. ERNEST breached his fiduciary duties to FRITZI, by failing to disclose to FRITZI  
2       that the transfers of shares of Fritz California stock to TANDLERS also effectively transferred  
3       interests in the real property to TANDLERS. ERNEST knew, or should have known, that  
4       FRITZI did not understand the corporate structure VALLI had devised for Fritz California and  
5       Fritz Realty, and did not know that ownership of the real property was being transferred to  
6       TANDLERS with the Fritz California stock. ERNEST had a duty to disclose this information  
7       to FRITZI, and he negligently failed to do so.

8       64. ERNEST further knew, or should have known, that FRITZI did not understand the  
9       effect of the documents, trust agreements, stock option agreements, and the like which FRITZI  
10      was asked to sign. ERNEST knew, or should have known, that in light of FRITZI'S education  
11      and work experience, he would be, and was, unable to adequately explain the documents to  
12      FRITZI, and he did not take any steps to insure that she understood what was occurring, or the  
13      effect of the documents she was signing. ERNEST was also aware that HOISINGTON made no  
14      effort to determine whether FRITZI understood that she was transferring the bulk of her estate to  
15      TANDLERS, and ERNEST made no analysis of FRITZI'S needs, nor did he make any  
16      determination of whether she had retained adequate assets to insure she could continue to live in  
17      the manner to which she had become accustomed.

18       65. ERNEST knew, or should have known, that FRITZI did not freely consent to the  
19       transactions set forth in paragraph 17 above. ERNEST knew that FRITZI did not truly participate  
20       in the transactions, which were constructed by ERNEST, VALLI and HOISINGTON without  
21       consulting FRITZI. ERNEST knew that FRITZI'S sole participation was to execute the  
22       documents which were presented to her.

23       66. ERNEST should have known that FRITZI was not adequately protected by the  
24       transactions, and that she did not receive adequate consideration in any of the transactions, all of  
25       which benefitted TANDLERS. ERNEST knew that the transactions were not fair and reasonable  
26       to FRITZI, and that their daughter Connie was receiving far less than her fair share of the family  
27       wealth.

28       67. FRITZI did not consent to the transfer of 70% of the stock and real estate to

1 TANDLERS, because FRITZI did not know until after August 14, 1999, that such transfers had  
 2 occurred.

3 68. By reason of ERNEST'S breach of fiduciary duty FRITZI has suffered general  
 4 damages, including loss of the assets transferred to TANDLERS; the amount of such damages has  
 5 not yet been fully ascertained and is subject to proof at trial; such damages are in excess of the  
 6 jurisdictional limits of this court.

7 69. FRITZI is entitled to recover compensatory damages for the value of lost income for  
 8 the use of property, and costs and expenses of this action.

9 70. [Deleted].

10 71. By reason of ERNEST'S breach of fiduciary duty, FRITZI is entitled to rescission of  
 11 the transfers of assets to TANDLERS, and disgorgement of profits earned by the TANDLERS as  
 12 a result of the transactions.

13 FIFTH CAUSE OF ACTION  
 14 (Professional Negligence against HOISINGTON and ORRICK)

15 72. Plaintiff incorporates paragraphs 1 through 23, 25 through 32, 40 through 47, and 55  
 16 through 61 herein.

17 73. In 1977 FRITZI and ERNEST retained HOISINGTON and ORRICK  
 18 ("ATTORNEYS") as their attorneys. The attorney-client relationship continued until August 14,  
 19 1999.

20 74. From approximately 1978 through August 14, 1999, ATTORNEYS breached their  
 21 duty of care, causing FRITZI injury. Their breach of duty includes but is not limited to the  
 22 following acts and omissions:

23 (a) Defendants failed to consult with or properly advise FRITZI, and failed to  
 24 determine that she understood the effect and consequences of signing the transaction  
 25 documents they prepared, and they failed to meet face to face with her to give her the  
 26 explanations required;

27 (b) Defendants unreasonably relied on ERNEST to explain the effect and  
 28 consequences of the transaction documents they prepared for FRITZI'S signature;

(c) Defendants breached the duty of loyalty by agreeing to represent VALLI and ROBERT without informing FRITZI and without obtaining the consent of FRITZI in writing, which was required because of the inherent conflict of interest;

(d) Defendants failed to advise FRITZI that the documents she was asked to sign to save taxes would transfer 70% of her assets (held in trust for her benefit or otherwise) to TANDLERS, FRITZI is informed and believes that these transfers were to her detriment and were caused in part by the conflict of interest in ATTORNEYS' representation of VALLI and ROBERT;

(e) They failed to analyze FRITZI'S needs to determine if the estate plan they had prepared and advised her to execute would leave her with adequate resources to support her in the manner in which she had become accustomed;

(f) Defendants failed to obtain any assurances from the TANDLERS that they would provide economic assistance to FRITZI if FRITZI requested such, although ATTORNEYS were aware the plan they devised might strip FRITZI of the resources she needed for her support;

(g) They failed to determine whether the agreements set forth in paragraph 17 were reasonable and fair to FRITZI;

(h) They failed to adequately investigate the underlying law and facts and failed to make an adequate disclosure to FRITZI of the consequences of entering into the transactions they had structured with ERNEST and VALLI, including the probable effect on Connie Benesch;

(i) They failed to evaluate and advise FRITZI concerning the effect on her real estate holdings if she entered into the transactions identified in paragraph 17;

(j) ATTORNEYS failed to advise FRITZI that a conflict of interest existed in their representation, particularly in connection with the transfers to VALLI and ROBERT, this conflict was an actual conflict which was not capable of being waived;

(k) ATTORNEYS failed to obtain a written waiver of any of the conflicts and they did not advise FRITZI to seek the advice of independent counsel before entering into the

1 transactions, FRITZI signed the agreements with no independent counsel or advice.

2 75. As a result of the attorney-client relationship, ATTORNEYS impliedly agreed that  
3 they would take all steps necessary to see that plaintiff obtained the full benefits of loyal and  
4 diligent representation, and the attorneys covenanted not to do anything to deprive FRITZI of the  
5 benefits she expected to receive as a result of their legal representation of her.

6 76. Due to the fiduciary relationship which existed between ATTORNEYS and FRITZI,  
7 they had a duty to fully inform her of any actions taken by them which affected her substantive  
8 rights, and to insure that her consent was fully informed and voluntarily given; this they repeatedly  
9 failed to do. They breached the duty of diligence by failing to personally consult with FRITZI.  
10 They mailed or sent the documents reflecting the transactions in paragraph 17 above to her for her  
11 signature; FRITZI is informed and believes they relied on others to explain the transactions. The  
12 few explanatory letters which were prepared were incomprehensible to her, as they would have  
13 been to any layperson.

14 77. As a result of the attorney-client relationship, ATTORNEYS had a duty to make full  
15 disclosure to FRITZI of the true status of their representation of VALLI and ROBERT and obtain  
16 her consent in writing to the conflict of interest. They failed to make any such disclosure and did  
17 not obtain her consent.

18 78. ATTORNEYS breached the standard of care, and the duty of loyalty by revealing  
19 confidential information to VALLI when they sent drafts of FRITZI'S will and trust agreements  
20 to VALLI for revisions desired by VALLI without FRITZI'S consent or knowledge.

21 79. Each and every one of the ATTORNEYS was aware that FRITZI would be injured  
22 and damaged if they breached their duty of care as attorneys.

23 80. As a result of the ATTORNEYS' breach of duty FRITZI entered into agreements  
24 which were inadvisable on their face, and which contained terms and conditions the defendants  
25 knew, or should have known, were unreasonable and unfair to FRITZI.

26 81. As a legal result of the ATTORNEYS' negligence FRITZI suffered injury and  
27 damages in an amount which has not been fully ascertained, but is subject to proof at trial. Such  
28 damages exceed the threshold jurisdictional limits of this court.

82. Due to the conflict of interest inherent in ATTORNEYS' representation of FRITZI while also representing VALLI and ROBERT, FRITZI is entitled to have all of the fees paid to ORRICK refunded to her.

83. By reason of ATTORNEYS' breach of fiduciary duty FRITZI is entitled to recover special damages including the costs and legal fees paid to ORRICK, which were expended in preparation of the transaction documents identified in paragraph 17. The exact amount of the damages thus incurred has not been fully ascertained, but is subject to proof at trial; the damages are in excess of the jurisdictional limits of this court.

84. As a further legal result of ATTORNEY'S breach of fiduciary duty FRITZI has suffered general damages, including loss of the assets transferred to TANDLERS; the amount of such damages has not yet been fully ascertained and is subject to proof at trial; such damages are in excess of the jurisdictional limits of this court.

85. FRITZI is also entitled to recover compensatory damages for the value of lost income for the use of property, and costs and expenses of this action.

SIXTH CAUSE OF ACTION  
(Financial Elder Abuse against VALLI and ROBERT)

86. Plaintiff incorporates paragraphs 1 through 23, 25 through 32, 40 through 47, 55 through 61, and 73 through 79 herein.

87. Plaintiff was 65 in 1986. At all times relevant to this action VALLI had a fiduciary relationship with FRITZI, as set forth above. ROBERT had a fiduciary relationship with FRITZI as alleged herein, his fiduciary relationship was in existence before, and at all times after 1986.

88. VALLI and ROBERT'S conduct, described in this complaint, constituted financial abuse as defined in Welfare and Institutions Code §15610.30 in that they transferred 70% of FRITZI'S assets to TANDLERS and left FRITZI without adequate financial resources to support herself in the manner to which she was accustomed.

89. VALLI and ROBERT'S conduct, described in this complaint, constituted financial abuse under Welfare and Institutions Code §15657 as defined in Welfare and Institutions Code §15610.30.

90. VAL and ROBERT were guilty of oppression in the commission of the above-described abuse.

91. Under Welfare and Institutions Code §15657(a), VALLI and ROBERT are liable to FRITZI for reasonable attorney's fees and costs.

92. Under Civil Code § 3294, VALLI and ROBERT are liable for punitive damages.

## SEVENTH CAUSE OF ACTION

(Civil Code §3345 Penalties Against VALLI, ROBERT, ORRICK and HOISINGTON)

93. Plaintiff incorporates paragraphs 1 through 23, 25 through 32, 40 through 47, 55 through 61, and 73 through 79 herein.

94. This action is an action to redress unfair and deceptive acts and practices committed by VALLI, ROBERT, ORRICK and HOISINGTON, and is brought on behalf of FRITZI BENESCH, born 1921, and who is a senior citizen protected by Civil Code §3345.

95. By this action FRITZI seeks to recover a civil penalty pursuant to Civil Code §3345 based on the following:

(a) VALLI, ROBERT, ORRICK and HOISINGTON knew or should have known that their conduct was directed to a senior citizen, namely FRITZI;

(b) The conduct of VALLI, ROBERT, ORRICK and HOISINGTON as alleged herein caused FRITZI to suffer substantial loss of a source of income, namely the assets transferred to TANDLERS, and to suffer the loss of assets essential to FRITZI'S welfare.

(c) FRITZI was substantially more vulnerable to defendants' conduct because of her age, and actually suffered substantial economic damage resulting from the conduct of VALLI, ROBERT, ORRICK and HOISINGTON.

96. FRITZI therefore is entitled to a statutory award of treble damages pursuant to Civil Code §3345.

**EIGHTH CAUSE OF ACTION**  
(Negligence Against All Defendants)

97. Plaintiff incorporates paragraphs 1 through 23, 25 through 32, 40 through 47, 55 through 61, and 73 through 79 herein.

98. Defendants and each of them, owed FRITZI a duty of care arising from the

relationships set forth in this complaint.

99. Defendants, and each of them, breached the duty of care owed to FRITZI as set forth herein.

100. As a legal result of the breach of duty of care of each of the defendants, FRITZI suffered injury to her property; the total amount of such damage has not yet been fully ascertained, but is subject to proof at trial. The amount of such damage exceeds the threshold jurisdictional limit of this court.

## **PRAAYER**

WHEREFORE, Plaintiff prays for judgment as follows:

1. For special damages according to proof;
  2. For general damages according to proof;
  3. For punitive damages on the First, Second, and Sixth Causes of Action;
  4. For attorney's fees on the Sixth Cause of Action;
  5. For treble damages on the Seventh Cause of Action;
  6. Equitable relief including but not limited to imposition of a constructive trust; reformation of trust agreements; including but not limited to removal of VALLI and ROBERT as; reformation of title to real property.
  7. For costs of suit;
  8. For such other and further relief as the Court deems proper.

Dated: October 30, 2001

## SHARON GREEN, LAWYER

Sharon Green  
SHARON GREEN, Attorney for  
Plaintiff



F I L E D  
San Francisco County Superior Court  
JUN - 9 2008

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5  
6 Attorneys for Fritz Benesch  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF SAN FRANCISCO

10 FRITZI BENESCH,  
11 Plaintiff,  
12 vs.  
13 VALLI BENESCH TANDLER, individually  
14 and as Trustee; ROBERT TANDLER,  
15 individually and as Trustee; WILLIAM  
HOISINGTON; ORRICK HERRINGTON &  
16 SUTCLIFF, LLP, a California Law firm; DOES  
1 through 20, inclusive,  
17  
Defendant.

Case No. 317187

NOTICE OF ASSOCIATION OF  
COUNSEL

18 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:  
19 PLEASE TAKE NOTICE that plaintiff Fritz Benesh hereby associates  
20 Liner Yankelevitz Sunshine & Regenstreif LLP as her counsel of record. All  
21 pleadings, orders and notices should henceforth be served upon Liner Yankelevitz  
22 Sunshine & Regenstreif LLP, 199 Fremont Street, 20th Floor, San Francisco,  
23 California 94105-2255, in addition to counsel who are already on the service list.  
24 The telephone and facsimile numbers at Liner Yankelevitz Sunshine &  
25 Regenstreif LLP, are (415) 489-7700 and (415) 489-7701, respectively.  
26

1 Dated: June 8, 2006

McGRANE GREENFIELD LLP

2

3

4

5

Such Association is hereby accepted:

6

7 Dated: June 8, 2006

LINER YANKELEVITZ  
SUNSHINE & REGENSTREIF  
LLP

9

10

11

12

13 Such Association is hereby approved:

14

15 Dated: June 8, 2006

By: William McGrane  
William McGrane,  
Attorneys for Fritz Benesh

By: Jeffrey Nussbaum  
Jeffrey Nussbaum,  
Attorneys for Fritz Benesh

Plaintiff Fritz Benesh

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1                   PROOF OF SERVICE

2 I, the undersigned, do hereby declare:  
3 I am employed in the County of San Francisco, California. I am over the age of  
4 eighteen years; a citizen of the United States; and not a party to the within action;  
5 my business address is McGrane Greenfield LLP, One Ferry Building, Suite 220,  
San Francisco, CA 94111.

5 On this date, as indicated by the asterisk markings below, I served the attached

6                   • NOTICE OF ASSOCIATION OF COUNSEL  
7

8 on the interested parties in said cause, as designated below:

9                 \*\* (By Hand Delivery/Messenger) I caused a sealed envelope to be  
10 hand delivered or sent by messenger service for immediate delivery.

11 Said envelope(s) are addressed as follows:

12 Melvin R. Goldman  
13 Morrison & Foerster LLP  
14 425 Market Street  
15 San Francisco, CA 94105  
\*\*

Elliot R. Peters  
Keker & Van Nest LLP  
710 Sansome Street  
San Francisco, CA 94111  
\*\*

15 David I Dalby  
16 Hinshaw & Culbertson LLP  
17 One California Street, 18th Floor  
18 San Francisco, CA 94111  
\*\*

Jeffrey Nussbaum  
Liner Yankelevitz Sunshine & Regenstreif  
LLP  
199 Fremont Street, 20<sup>th</sup> Floor  
San Francisco, CA 94105-2255  
\*\*

19  
20 I declare under penalty of perjury under the laws of the State of California that the  
21 foregoing is true and correct, and that this declaration was executed on June 9,  
22 2006, at San Francisco, California.

23                     
24

25                   Jack Praetzellis  
26

04/25/2006 15:45 FAX 415

Sent By: SHARON GREEN, LAWYER

MCGRANE, GREENFIELD  
702 385 4593; A. 25-06 17:08;  
MCGRANE, GREENFIELD002  
Page 2  
002

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State bar number, and address): <b>William McGrane [057761]</b> McGrane Greenfield LLP One Ferry Building, Suite 220 San Francisco, CA 94111 TELEPHONE NO.: 415-283-1776 FAX NO.: 415-283-1777 EMAIL ADDRESS (if any): <a href="mailto:wmcgrane@mogranegreenfield.com">wmcgrane@mogranegreenfield.com</a>		MC-080 FOR COURT USE ONLY
ATTORNEY FOR PLAINTIFF: <b>Fritzi Benesch</b>		<b>FILED</b> San Francisco County Superior Court APR 26 2006 <i>GORDON MANNI, Clerk</i> BY <i>[Signature]</i> CLERK
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, 94104 BRANCH NAME:		CASE NUMBER: 317187
CASE NAME: Benesch v. Tandler		
SUBSTITUTION OF ATTORNEY—CIVIL (Without Court Order)		CASE NUMBER: 317187

THE COURT AND ALL PARTIES ARE NOTIFIED THAT (name): **Fritzi Benesch** makes the following substitution:

1. Former legal representative  Party represented self  Attorney (name): **Sharon Green**
2. New legal representative  Party is representing self  Attorney
  - a. Name: **William McGrane**
  - b. State Bar No. (if applicable): **057761**
3. Address (number, street, city, ZIP, and law firm name, if applicable):  
**McGrane Greenfield LLP, One Ferry Building, Suite 220, San Francisco, CA 94111**
- d. Telephone No. (include area code): **415-283-1776**
3. The party making this substitution is a  plaintiff  defendant  petitioner  respondent  other (specify):

**\*NOTICE TO PARTIES APPLYING TO REPRESENT THEMSELVES**

- |               |                           |                              |
|---------------|---------------------------|------------------------------|
| • Guardian    | • Personal Representative | • Guardian ad Litem          |
| • Conservator | • Probate Executor        | • Unincorporated association |
| • Trustee     | • Corporation             |                              |

If you are applying as one of the parties on this list, you may NOT act as your own attorney in most cases. Use this form to substitute one attorney for another attorney. SEEK LEGAL ADVICE BEFORE APPLYING TO REPRESENT YOURSELF.

**NOTICE TO PARTIES WITHOUT ATTORNEYS**

A party representing himself or herself may wish to seek legal assistance. Failure to take timely and appropriate action in this case may result in serious legal consequences.

4. I consent to this substitution.

Date: April 25 2006

Fritzi Benesch

(TYPE OR PRINT NAME)

*Fritzi Benesch*

(SIGNATURE OF PARTY)

- 5.
- 
- I consent to this substitution.

Date: April 25 2006

Sharon Green

(TYPE OR PRINT NAME)

*Sharon Green*

(SIGNATURE OF FORMER ATTORNEY)

- 6.
- 
- I consent to this substitution.

Date: April 25 2006

William McGrane

(TYPE OR PRINT NAME)

*William McGrane*

(SIGNATURE OF NEW ATTORNEY)

Form Adopted Per Mandatory Use  
Judicial Council of California  
MC-080 (Rev. January 1, 2004)SUBSTITUTION OF ATTORNEY—CIVIL  
(Without Court Order)Code of Civil Procedure, §§ 264(1), 265;  
Civ. Rules of Court, Rule 270  
Attorneys LegalNet, Inc.  
[www.USCourtsForms.com](http://www.USCourtsForms.com)

04/25/2006 15:45 FAX 415 3

Sent By: SHARON GREEN, LAW

MCGRANE, GREENFIELD

702 385 4593; -25-06 17:08;

RECORDED, GREENFIELD

003

Page 3

003

MC-080

CASE NAME: Benesch v. Tandler

CASE NUMBER:

317187

**PROOF OF SERVICE BY MAIL**  
**Substitution of Attorney—CIVIL**

**Instructions:** After having all parties served by mail with the Substitution of Attorney—Civil, have the person who mailed the document complete this Proof of Service by Mail. An unnotarized copy of the Proof of Service by Mail should be completed and served with the document. Give the Substitution of Attorney—Civil and the completed Proof of Service by Mail to the clerk for filing. If you are representing yourself, someone else must mail these papers and sign the Proof of Service by Mail.

1. I am over the age of 18 and not a party to this cause. I am a resident of or employed in the county where the mailing occurred. My residence or business address is (specify): McGrane Greenfield LLP, One Ferry Building, Suite 220, San Francisco, CA 94111
  2. I served the Substitution of Attorney—Civil by enclosing a true copy in a sealed envelope addressed to each person whose name and address is shown below and depositing the envelope in the United States mail with the postage fully prepaid.
- (1) Date of mailing: April 25, 2006      (2) Place of mailing (city and state): San Francisco, CA
3. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

Jack Pruetzells

(TYPE OR PRINT NAME)

SIGNATURE

**NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED**

- a. Name of person served: Sharon H. Green  
b. Address (number, street, city, and ZIP): 1721 Waldman Ave  
Las Vegas, NV 89102
- c. Name of person served: Melvin R. Goldman  
d. Address (number, street, city, and ZIP): Morrison & Foerster LLP  
425 Market Street  
San Francisco, California 94105-2482
- e. Name of person served: Elliot R. Peters  
f. Address (number, street, city, and ZIP): Keker & Van Nest LLP  
710 Sansome Street  
San Francisco, CA 94111
- g. Name of person served: David I Dalby  
h. Address (number, street, city, and ZIP): Hinshaw & Culbertson LLP  
One California Street, 18th Floor  
San Francisco, California 94111
- i. Name of person served:  
j. Address (number, street, city, and ZIP):

List of names and addresses continued in attachment.

MC-080 (Rev. January 1, 2008)

**SUBSTITUTION OF ATTORNEY—CIVIL**  
**(Without Court Order)**

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